

Judge Berman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV X 02375

JOSE PEREZ AND ROSA PEREZ,

Plaintiffs,

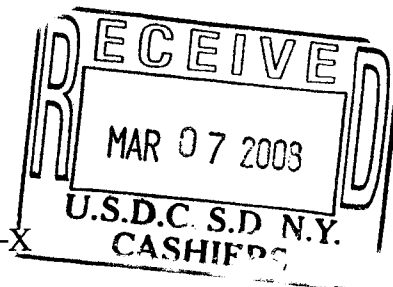
Index No.:

-against-

NOTICE OF REMOVAL

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.



**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

The Petitioners, GAETANO AMORE, FREEDOM RENTAL, FREEDOM RENT A CAR, ROSEDALE DODGE, INC. and BERGEN RENT A CAR, LLC, defendants in the above-captioned action, by their attorneys, WHITE FLEISCHNER & FINO LLP, respectfully shows the Court:

1. This petitioners are defendants in the instant action.
2. The action was commenced by service of a Summons and Verified Complaint in the Supreme Court, State of New York, County of Bronx on or about October 9, 2007. (A copy of said Summons and Verified Complaint is attached hereto as "*Exhibit A*")
3. Concurrent with its Answer, the petitioner served a Demand for Relief on or about June 2, 2007. Plaintiff served its Response to Demand for Relief on or about February 12, 2008. Which was received by the undersigned on February 18, 2008 (Copies of said Demand for Relief and Response to Demand for Relief are attached hereto as "*Exhibit B*")

4. The plaintiff in the above-captioned action allegedly personal injuries as a result of an accident involving a forklift and occurring on or about December 27, 2004 on White Plains road at or near its intersection with Pelham Parkway, Bronx County, New York.

5. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. 1332 because there is complete diversity in the matter and the amount exceeds the sum of \$75,000.00 exclusive of interest and costs.

6. The defendant ANDRE GAETANO resides at 43 Industrial Avenue, Fairview, New Jersey 07022.

7. The defendant FREEDOM RENTAL d/b/a FREEDOM RENT A CAR is a New Jersey corporation with its principal place of business in the State of New Jersey.

8. Upon information and belief, plaintiffs JOSE PEREZ and ROSA PEREZ are and were at the time of the commencement of this action, citizens of the State of New York.

9. Upon information and belief, defendant ROSEDALE DODGE, INC., is a Minnesota corporation with its principal place of business in the State of Minnesota.

10. Upon information and belief defendant BERGEN RENT A CAR, LLC., is a New Jersey corporation with its principal place of business in the state of New Jersey.

11. The underlying controversy and every genuine issue of law and fact herein is wholly between a citizen of the State of New York and citizens of a state or territory other than New York.

WHEREFORE, petitioner prays that the instant action now pending before the Supreme Court in the State of New York, County of Bronx, be removed there from to the

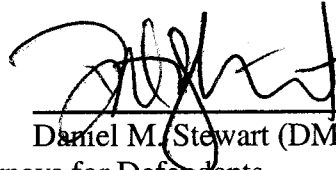
United States District Court of the Southern District of New York, and for such other and further relief as is just and proper.

Dated: New York, New York
March 4, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:

A handwritten signature in black ink, appearing to read 'Daniel M. Stewart', is written over a horizontal line.

Daniel M. Stewart (DMS 7989)

Attorneys for Defendants

61 Broadway, 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13119-D-DMS/ODR

TO: (See Attached Affidavit)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Arleen Rosa, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Brooklyn, New York.

That on March 10, 2008, deponent served the within **NOTICE OF REMOVAL, RULE 7.1 STATEMENT and CIVIL COVER SHEET** upon the attorneys and parties listed below by United States prepaid mail by placing same in a mailbox in the State of New York:

TO:

Steven G. Davis, Esq.
JACOBY & MEYERS, LLP
c/o Processing Center
436 Robinson Avenue
Newburgh, New York 12350
(800) 890-3090


Arleen Rosa

Sworn to before me this
10th day of March, 2008


Notary Public

LAUREN RICCIO MELTZER
NOTARY PUBLIC, State of New York
No. 01R15082855
Qualified in King County
Commission Expires July 28, 2009

OCT-26-2007 14:17
FILE #73028-02-1/db

DATE OF FILING: 10/9/07
INDEX #: 301602/07

Plaintiff designates
Bronx County
as the place of trial.

The basis of venue is:
Plaintiff(s) residence.

Plaintiff resides at:
2386 Walton Avenue
Bronx, New York
County of Bronx.

SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiff(s),

-against-

SUMMONS

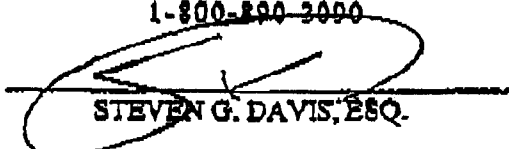
GAETANO AMORE, FREEDOM RENTAL, FREEDOM RENT A CAR,
ROSEDALE DODGE, INC. and BERGEN RENT A CAR, L.L.C.,

Defendant(s).
-----X

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within -20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
c/o PROCESSING CENTER
436 Robinson Avenue
Newburgh, New York 12550
1-800-890-2000


STEVEN G. DAVIS, ESQ.

Dated: October 1, 2007.

DEFENDANT'S ADDRESS:
SEE VERIFIED COMPLAINT

OCT-25-2007 14:17

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File #73028-02/db

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiff,

-against-

NOTICE
INDEX NO.: 301602/07

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, L.L.C.,

Defendants.
-----X

SIR:

PLEASE TAKE NOTICE that pursuant to the provisions of Sections 253 and 254 of the Vehicle and Traffic Law of the State of New York, a copy of the Summons and Verified Complaint in the above-entitled action was served upon the above-named defendant, ROSEDALE DODGE, INC., by mailing on October 17, 2007, one copy of such Summons and Verified Complaint to said Secretary of State of New York, addressed to his office in the City of Albany, State of New York, with a fee of TEN (\$10.00) DOLLARS.

Please Send All Correspondence to the Address Indicated Above



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AND TAKE FURTHER NOTICE that we are sending you
herewith by Certified Mail, Return Receipt Requested, copy
of the Summons and Verified Complaint in this Action.

DATED: October 15, 2007.

JACOBY & MEYERS, LLP
Attorneys for Plaintiffs
Office & P.O. Address
C/O Processing Center
436 Robinson Avenue
Newburgh, New York 12550

BY: 

STEVEN G. DAVIS, ESQ.

TO: ROSEDALE DODGE, INC.
Defendant
2755 Long Lake Road
Roseville, Minnesota 55113
Cert. # 7006 3450 0002 1287 3510

Please Send All Correspondence to the Address Indicated Above



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File #73028-02-1/db

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiffs.

-against-

VERIFIED COMPLAINT

GAETANO AMORE, FREEDOM RENTAL,
FREEDOM RENT A CAR, ROSEDALE DODGE,
INC. and BERGEN RENT A CAR, L.L.C.,

Defendants.
-----X

Plaintiffs, by attorneys, JACOBY & MEYERS, LLP as and for the
Verified Complaint, herein allege the following:

AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, JOSE PEREZ

1. That at all times hereinafter mentioned, the plaintiffs were and still are residents of the County of Bronx, State of New York.
2. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, was and still is a resident of the County of Bergen, State of New Jersey.
3. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a domestic corporation organized and existing under and by virtue of

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the Laws of the State of New York.

4. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation duly incorporated within the State of Minnesota.

5. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation authorized to do business in the State of New York.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a business entity doing business within the State of New York.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a domestic limited liability company organized and existing under and by virtue of the Laws of the State of New York.

8. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company duly incorporated within the State of Minnesota.

9. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company authorized to do business in the State of New York.

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10. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a business entity doing business within the State of New York.

11. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

12. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a foreign corporation duly incorporated within the State of New Jersey.

13. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a foreign corporation authorized to do business in the State of New York.

14. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a business entity doing business within the State of New York.

15. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

16. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a foreign corporation duly incorporated within the State of New Jersey.

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17. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a foreign corporation authorized to do business in the State of New York.

18. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a business entity doing business within the State of New York.

19. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

20. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

21. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

22. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

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23. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

24. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

25. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

26. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

27. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

28. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for

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the State of New Jersey.

29. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RXY68B, for the State of New Jersey.

30. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RXY68B, for the State of New Jersey.

31. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RXY68B, for the State of New Jersey.

32. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RXY68B, for the State of New Jersey.

33. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RXY68B, for the State of New Jersey.

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34. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

35. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, was the operator of the aforesaid motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

36. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENTAL.

37. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENT A CAR.

38. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, ROSEDALE DODGE, INC.

39. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and

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knowledge of the defendant owner, BERGEN RENT A CAR, L.L.C.

40. That at all times hereinafter mentioned, the plaintiff, JOSE PEREZ, was the operator of a 1998 Dodge motor vehicle, bearing License Plate #14022LA, for the State of New York, owned by one, Nice & Friendly Transport.

41. That on or about the 27th day of December, 2004, the plaintiff, JOSE PEREZ, operated the aforesaid motor vehicle while within the scope of his employment with ex. Travel Well Transportation.

42. That at all times hereinafter mentioned, White Plains Road at intersection with Pelham Parkway, located in the Borough of Bronx, County of Bronx, State of New York, was and still is a public highway and thoroughfare and was the situs of the accident herein.

43. That on or about the 27th day of December, 2004, the aforementioned motor vehicles were in contact with each other.

44. The accident and resulting injuries were caused by the negligent, wanton, reckless and careless acts of the defendants herein.

45. That the defendants, and each of them, were negligent, wanton, reckless and careless in allowing, causing, and/or permitting their motor vehicle to come into contact with the plaintiff's motor vehicle; in failing to properly keep, control and maintain the motor vehicle so as to prevent the accident herein; in failing to keep the
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motor vehicle under proper control; in failing to operate the motor vehicle in a manner and at a speed that was reasonable and proper under the prevailing traffic conditions; in failing to properly operate the braking and acceleration devices of the motor vehicle under the circumstances of the roadway where the accident occurred; in failing to keep a proper lookout; in failing to stop and/or slow down; in acting with reckless disregard for the safety of others; in failing to keep alert and attentive; in failing to properly apply brakes; in failing to sound horn; in failing to yield the right of way; in failing to obey traffic signs, signals and/or lights; and the defendants were in other ways negligent, wanton, reckless, and careless.

46. The limited liability provisions of C.P.L.R. 1601 do not apply pursuant to C.P.L.R. 1602(6) on the grounds that the defendants liability is based upon their use, operation and ownership of a motor vehicle or motorcycle and C.P.L.R. 1602(7) on the grounds that defendants acted with reckless disregard for the safety of others including the plaintiff herein.

47. That by reason of the foregoing, this plaintiff was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. Further, this plaintiff was caused to expend and become

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obligated for diverse sums of money as a result of this accident; and this plaintiff further was caused to lose substantial periods of time from his normal vocation and activities, and upon information and belief, may continue in that way into the future and suffer similar losses.

48. That this plaintiff sustained a serious injury, as defined in subdivision (d) of Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic economic loss, as defined in Subdivision (a) of Section 5102 of the Insurance Law of the State of New York.

49. That by reason of the foregoing, this plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter.

AS AND FOR A SECOND CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, ROSA PEREZ

50. This plaintiff repeats, reiterates, and realleges each and every allegation contained in the paragraphs numbered '1' through '48' of the First Cause of Action, with the same force and effect as if more fully set forth herein at length.

51. That as a result of the aforementioned, this plaintiff, the lawful wedded spouse of the plaintiff in the First Cause of Action, has and will suffer the loss and impairment of the spouse's services.

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ROSEDALE DODGE, INC.
Defendant
2755 Long Lake Road
Roseville, Minnesota 55113

BERGEN RENT A CAR, L.L.C.
Defendant
1187 Teaneck Road
Teaneck, New Jersey 07666

COUNTY OF SINGAPORE

JOSE PEREZ AND ROSA PEREZ,

Plaintiff,

Index No.: 301602/07

-against-

DEMAND FOR
RELIEF

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.

S I R S :

PLEASE TAKE NOTICE that, pursuant to CPLR 3017(c) the defendants herein, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., AND BERGEN RENT A CAR, LLC, hereby requests that, within twenty (20) days hereof, the plaintiffs, JOSE PEREZ AND ROSA PEREZ, serve a supplemental demand for relief setting forth the total damages to which they deem themselves entitled.

Dated: New York, New York
January 2, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:


DANIEL M. STEWART

Attorneys for Defendants

61 Broadway, 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13119-D-DMS/ODR

TO: (See Attached Affidavit)

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiffs,

~~against~~

RESPONSE TO DEMAND
FOR DAMAGES

INDEX #: 301602/07

GAETANO AMORE, FREEDOM RENTAL,
FREEDOM RENT A CAR, ROSEDALE DODGE,
INC. and BERGEN RENT A CAR, L.L.C.,

Defendants.
-----X

The plaintiffs claim damages against defendants in the sum of
THREE MILLION (\$3,000,000.00) DOLLARS on the First Cause of
Action; the sum of THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS
on the Second Cause of Action; together with costs and
disbursements of this action.

Yours, etc.,

JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
c/o Processing Center
436 Robinson Avenue
Newburgh, New York 12550

BY: 

ANDREW FINKELSTEIN, ESQ.

TO: WHITE, FLEISCHNER & FINO, LLP
61 BRADWAY - 18TH FLOOR
NEW YORK, NY 10006

